

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-against- :

COLONIAL INVESTMENT
MANAGEMENT LLC,
COLONIAL FUND LLC, and
CARY G. BRODY,

Defendants. :

07 CV 8849 (PKC)
ELECTRONIC FILING

**AFFIDAVIT OF IRA LEE SORKIN
IN SUPPORT OF THE MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6) OF DEFENDANTS
COLONIAL INVESTMENT MANAGEMENT LLC,
COLONIAL FUND LLC, AND CARY G. BRODY**

IRA LEE SORKIN, an attorney duly admitted to practice before this Court, declares as follows under penalty of perjury pursuant to 28 U.S.C. §1746:

1. I am a partner at the law firm Dickstein Shapiro LLP, attorneys for defendants Colonial Investment Management LLC (“CIM”), Colonial Fund LLC (“Colonial”), and Gary G. Brody (“Brody”) (together, the “Defendants”), and I am fully familiar with the facts and circumstances of the above captioned case.

2. I submit this Affidavit in support of the Defendants’ Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

3. Annexed hereto as Exhibit A is a true and correct copy of the Amended Complaint in this action.

4. CIM is the managing member and adviser of Colonial. Brody is a principal of Colonial Asset Management Advisors, Inc., which is the managing member of CIM.

5. Rule 105 of Regulation M (“Rule 105”) was promulgated by the United States Securities and Exchange Commission (“Commission”) in January, 1997.

6. The Commission alleges that the Defendants violated Rule 105 by engaging in eight direct violations and ten “sham transactions” that had the effect of hiding violations of the rule.

7. Since its promulgation, we have found only twelve reported cases brought by the Commission alleging violations of Rule 105, and each case was settled by way of consent.

8. On November 6, 2003, the Commission issued a proposing release regarding Regulation SHO, in which it solicited comments to clarify the language of Rule 105.

9. On July 28, 2004, the Commission issued an adopting release of Regulation SHO that provided interpretive guidance concerning alleged “sham transactions” in connection with Rule 105.

10. Thirteen of the eighteen alleged violative transactions in this case allegedly occurred after the Regulation SHO adopting release.

11. On December 6, 2006, Eric Sirri, Director of the Division of Market Regulation for the Commission, commented on the difficulties of interpreting Rule 105.

12. On December 13, 2006, the Commission issued a proposal for the adoption of the new Rule 105.

13. On October 9, 2007, the new Rule 105 became effective.

14. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
December 4, 2007

s/Ira Lee Sorkin

Ira Lee Sorkin

Certificate of Service

I hereby certify that on December 4, 2007, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

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